**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP S/S No. 4587/01

Damodar Prasad

vs

Presiding Officer, Labour

Court, Dehradun

Approved for reporting

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~~Not approved for reporting~~

Date of decision 07.08.2006

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition no. 4587 of 2001 (SS)

Damodar Prasad s/o Sri Sikkar R/o Balmiki Basti, Ward No. 1 Landhora, Tehsil Roorkee, District Haridwar

..... Petitioner

Versus

1. Presiding Officer, Labour Court, Dehradun
2. Nagar Panchayat Landhora District Haridwar
3. Executive Officer, Nagar Panchayat Landhora, District Haridwar ..... Respondents

Sri Lok Pal Singh, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 7.8.2006

**Hon'ble Rajesh Tandon, J.**

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the termination orders dated 10.3.1998,8.9.2000 and 28.5.2001 passed by the Presiding Officer Labour Court, Dehradun.

Briefly stated the services of the petitioner was regularized with effect from 1.4.1995 and he was appointed on the post of Safai Nayak from 8.9.1995. The petitioner was terminated by the Executive Officer showing him as absent from duty. The petitioner has raised the dispute before the labour Court, Dehradun. The Labour Court has dismissed the

reference vide order dated 10.3.1998. Thereafter a notice was published on the notice board to the effect that the termination order dated 10.3.1998 was confirmed by the Presiding Officer, labour Court, Dehradun vide order dated 8.9.200. Thereafter, the petitioner filed a review application before the labour Court which was also dismissed vide order dated 25.8.2001.

The Labour Court has decided the reference against the petitioner on the ground that on various dated the petitioner was informed but he was not present before the Inquiry Officer and, therefore, the case proceeded ex parte against him and, therefore, the termination order requires no interference. A perusal of the order of the Labour Court also shows that that the Inquiry Officer has submitted his report on 23.8.1998, and thereafter again notice was sent but the petitioner was absent.

In the writ petition, the petitioner has submitted that he was suffering from illness and he was under treatment of Dr. Jagdish Prasad, Medical Officer, Primary health Centre, Landhora, Haridwar between the period from 6.123.1996 to 14.12.1996 and when the petitioner has recovered from the illness on 15.12.1996 he moved an application along with fitness certificate to the Executive Officer. Thereafter the petitioner gain fell ill and the petitioner was under the treatment of Dr. H.K. Fuloria, Medical Officer, District H.M.G. Hospital, Haridwar. The petitioner was ill from 6.12.1996 to 14.12.1996 and informed the Office of Nagar Panchayat Landhora for his illness on 15.12.1996. He appeared before the Executive Officer when he recovered from illness but the Executive Officer denied to permit him to join. The Chairman Nagar Panchyat Landhora, District Haridwar issued a show cause notice on 28.12.1996 to the petitioner stating that the petitioner is regularly absent form

his duty. The petitioner replied the notice dated 28.12.1996 stating that the petitioner was suffering from illness and therefore, he was unable to attend the duty. On 8.1.1997 the Chairman, Nagar Panchayat Landhora, Haridwar sent a warning letter to the petitioner, by which he required the satisfactory answer from the petitioner. The petitioner has alleged that the Executive Officer was under pressure of Chairman, Nagar Panchayat Landhora and he was not interested to permit the petitioner to join the duty, then the petitioner made a complaint to the Sub Divisional Magistrate, Roorkee, District Haridwar on 16.1.1997 and the Sub Divisional Magistrate directed the Executive Officer to take necessary action into the matter, but the Executive Officer did not take any action.

The allegations made in the writ petition has not been controverted by the respondents although time was granted to them for filing counter affidavit on 1.8.2005 and 6.2.2006.

Counsel for the petitioner has submitted that absence from duty on medical ground is not a ground for dismissal from service. He placed reliance on the observations made by the Apex Court in the case Bhagwan Lal Arya vs. Commissioner of Police, Delhi, (2004) 4 SCC 560. The Apex Court has held as under:

*"In the instant case, the appellant had absented himself for 2 months, 7 days and 17 hours on medical grounds. The above two rules provide that penalty of removal can be imposed only in cases if grave misconduct and continued misconduct indicate incorrigibility and complete unfitness for police service. The absence of the appellant on medical grounds with application for leave as well as sanction of leave can under no circumstances, in our opinion, be termed as grave misconduct*

*or continued misconduct rendering him unfit for police service."*

The grievance of the petitioner is that he was regularised and thereafter he was terminated without giving any notice and without assigning any reasons.

In view of the above, order dated 10.3.1998 passed by the respondent no. 3 is set aside. The petitioner is re-instated in service with consequential benefits.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 7.8.2006 **Rajesh Tandon, J.**

*Dhyani